

AMENDED IN SENATE MAY 14, 2002

SENATE BILL

No. 1994

Introduced by Senator Soto

(Principal coauthor: Assembly Member Chu)

(Coauthors: Assembly Members Jackson, Keeley, Pavley, and Wayne)

February 22, 2002

An act to add Division 29 (commencing with Section 38000) to the Public Resources Code, relating to petroleum pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1994, as amended, Soto. California Clean Communities and Petroleum Pollution Cleanup Act of 2002.

(1) Existing law creates the Carl Moyer Memorial Air Quality Standards Attainment Program, administered by the State Air Resources Board, which authorizes grants by air quality management districts and air pollution control districts to offset the incremental cost of projects that reduce the emissions of oxides of nitrogen (NO_x) from onroad trucks, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, stationary agricultural engines, and other high-emitting diesel engines. Existing law requires the state board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of state ambient air quality standards by the earliest practicable date. Existing state board guidelines establish criteria for a lower emission schoolbus program, a replacement and particulate matter retrofit program for diesel schoolbuses in the state; *that is administered by the state board and implemented in part by the districts.*

This bill would enact the California Clean Communities and Petroleum Pollution Cleanup Act of 2002, which would require the operator of every refinery ~~in the state~~ to pay a 30¢ fee for each barrel of crude oil ~~refined received at that a refinery within the state~~ to the State Board of Equalization on a ~~quarterly~~ monthly basis based on the number of barrels of crude oil ~~refined received~~ during the previous ~~quarter~~ month.

The bill would create the California Petroleum Pollution Cleanup Fund in the State Treasury, and would require that ~~=====~~ *a certain percentage* of the fees imposed on each barrel of ~~refined~~ crude oil *received, as determined annually by the State Energy Resources Conservation and Development Commission*, be imposed on the amount of crude oil refined into petroleum products other than diesel fuel. The bill would require that the moneys from that portion of the fee be deposited in the fund for allocation to a ~~Petroleum-Polluted Water Pollution~~ Remediation Account, administered by the California Environmental Protection Agency ~~to remediate petroleum contamination of groundwater and marine and terrestrial surface waters~~. The bill would require that ~~=====~~ *a certain percentage* of the fees imposed on each barrel of ~~refined~~ crude oil *received, as determined annually by the State Energy Resources Conservation and Development Commission*, be imposed on the amount of crude oil refined into diesel fuel, as defined. The bill would require that 50¢ of each dollar from that portion of the fee be deposited in the fund for allocation to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund to fund diesel emissions exposure reduction incentive projects and programs through air quality management districts and air pollution control districts, and that the remaining 50¢ of each such dollar be allocated to the state board to provide funding to ~~purchase new, lower-emitting schoolbuses~~ *the lower-emission schoolbus program*. By imposing additional duties upon the districts, this bill would impose a state-mandated local program. ~~The bill would also require the state board to develop and adopt guidelines for the purchase of those schoolbuses, separate and distinct from the guidelines adopted for the existing program administered by the state board.~~

~~The bill would require the Secretary for Environmental Protection to establish the California Petroleum Pollution Cleanup Fund Committee, comprised of specified members. The bill would require that committee to oversee the distribution of the moneys allocated to the Petroleum Polluted Water Remediation Account, including reviewing~~

~~applications for funding, selecting fund recipients, and deciding upon the level of funding for recipients of moneys from that account. The bill would require the agency to establish a system for ranking projects according to their priority based on specified criteria, and to allocate the funds from the account based upon that criteria. The bill would also require the agency, commencing January 1, 2005, to biennially submit a report to the Legislature and the Governor detailing the recipients of the funds, and including specified information regarding the funded projects, and would require the agency to include a projection of the projects the agency intends to fund during the two years following submission of the report. The bill would specify the entities, projects, and costs entities that would be eligible for funding from that account.~~

~~The bill would prohibit the expenditure of more than 3% of the funds for program administration and overhead costs annually. The bill would specify that costs to address contamination at facilities owned or operated by the person applying for funding would not be eligible for funding from the account, to the extent that the person is verifiable and directly responsible for that contamination. The bill would require moneys allocated to the Carl Moyer Memorial Air Quality Standards Trust Fund and to the state board for the purchase of new, lower-emitting schoolbuses to be expended in a manner that addresses air pollution in communities that are severely impacted by air pollution.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) The extraction, refinement, transportation, and combustion
2 of petroleum has contributed significantly to high levels of
3 pollution in the air, groundwater, and surface waters of the state.

4 (b) The petroleum industry has made significant strides in
5 recent years to employ clean technologies and practices to protect
6 against and clean up petroleum-related pollution. Despite those
7 efforts, air and water pollution resulting from the transportation
8 and energy industries over the years has exhausted available
9 resources needed for cleanup.

10 (c) The transportation sector is the leading contributor of air
11 pollution in the state, accounting for the emission of more than 50
12 percent of smog-forming pollutants in the state. In addition to
13 smog-forming pollutants, diesel engines also emit particulate
14 matter, inhalation of which can lead to lung damage, cancer,
15 respiratory illness, and premature death. In 1998, the State Air
16 Resources Board classified diesel exhaust as a toxic air
17 contaminant.

18 (d) Petroleum-related pollution resulting from urban runoff
19 pervades coastal waters, including, but not limited to, the San
20 Francisco and Santa Monica Bays and inland streams and rivers.
21 ~~Sufficient funding is not available to regional water boards for the~~
22 ~~development and implementation of total maximum daily loads~~
23 ~~(TMDL) standards, which are required to be developed by all~~
24 ~~states pursuant to the federal Clean Water Act, in order to identify~~
25 ~~and limit pollution sources. Additionally, sufficient funding is not~~
26 ~~available to local governments in order for them to comply with~~
27 ~~TMDL standards and to implement stormwater pollution~~
28 ~~prevention and mitigation programs to begin the~~
29 ~~resource-intensive process of cleaning up these waters. Petroleum~~
30 ~~pollution has adverse effects on fish and other aquatic resources.~~

31 (e) *Refineries release cancer-causing chemicals, including, but*
32 *not limited to, benzene and other chemicals known to cause*
33 *respiratory ailments and birth defects, as well as millions of*
34 *gallons of wastewater per day that contain harmful chemicals*
35 *including, but not limited to, chromium. These daily releases often*
36 *are not addressed or monitored. Pollution from refineries is a*
37 *serious environmental justice concern, as refineries are often*
38 *located in or near communities of color and low-income*
39 *neighborhoods.*

(f) Petroleum releases, particularly those containing methyl tertiary butyl-ether (MTBE), has degraded the quality of groundwater in California, creating over 10,000 groundwater contaminant plumes in the state.

~~(f)–~~

(g) To clean up current petroleum-related pollution and to protect against further contamination, it is necessary to establish stable, sufficiently funded programs, dedicated specifically for the purpose of pollution cleanup and prevention.

~~(g)–~~

(h) In order to ensure the necessary level of funding and continued operation of these programs, it is necessary to create a sustainable, consistent funding mechanism that is independent from the State Budget. A fee ~~per barrel~~ *per barrel* of petroleum refined within the state, imposed at the refinery gate, would provide that mechanism.

~~(h)– The fee per barrel~~

(i) *The fee per barrel* imposed by this act is proportionate to the harm resulting from petroleum pollution within the state, and is a fair and reasonable means to mitigate the past, present, and future harm to public health and safety resulting from petroleum pollution in the state.

~~(i)–~~

(j) It is the intent of the Legislature that the fees imposed by this act not be passed through to consumers.

SEC. 2. Division 29 (commencing with Section 38000) is added to the Public Resources Code, to read:

DIVISION 29. CALIFORNIA CLEAN COMMUNITIES
AND PETROLEUM POLLUTION CLEANUP ACT OF 2002

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

38000. This division shall be known, and may be cited, as the California Clean Communities and Petroleum Pollution Cleanup Act of 2002.

38001. For purposes of this division, the following terms have the following meanings:

(a) “*Account*” means the *Petroleum Pollution Remediation Account*.

1 (b) “Agency” means the California Environmental Protection
2 Agency.

3 (c) “Barrel of crude oil” has the same meaning as that term is
4 defined in Section 2241 of Title 18 of the California Code of
5 Regulations.

6 (d) “Crude oil” means petroleum in an unrefined or natural
7 state, including condensate and natural gasoline.

8 ~~(b)–~~

9 (e) “Crude oil producer” means any person or entity
10 producing crude oil within the state that does not refine crude oil
11 into a product.

12 ~~(e)–~~

13 (f) “Diesel fuel” means any liquid that is commonly or
14 commercially known or sold as a fuel that is suitable for use in a
15 diesel-powered highway vehicle. A liquid meets this requirement
16 if, without further processing or blending, the liquid has practical
17 and commercial fitness for use in the engine of a diesel-powered
18 highway vehicle.

19 ~~(d)–~~

20 (g) “Fund” means the California Petroleum Pollution Cleanup
21 Fund created pursuant to Section 38050.

22 ~~(e)–~~

23 (h) “Petroleum” means any petroleum product, including, but
24 not limited to, petroleum additives.

25 ~~(f)–~~

26 (i) “Petroleum additive” includes, but is not limited to, methyl
27 tertiary-butyl ether (MTBE), *benzene*, *toluene*, *ethylbenzene*, and
28 *xylene*.

29 ~~(g)–~~

30 (j) “Petroleum contamination” means pollution of
31 groundwater and surface waters, including public and private
32 water supplies from any petroleum product, including petroleum
33 additives, or by any action related to the extraction, refinement,
34 transport, storage, sale, *combustion*, or usage of petroleum.

35 ~~(h) “TMDL” means total maximum daily load of a pollutant~~
36 ~~that a body of water can receive and still meet water quality~~
37 ~~standards, and an allocation of that amount to the pollutant’s~~
38 ~~sources. For the purposes of this division, the term is limited to~~
39 ~~include only pollutants derived from petroleum.~~

~~(i) “TMDL standards” means the TMDL standards established by the state pursuant to subsection (d) of Section 1313 of Title 33 of the United States Code. For the purposes of this division, the term is limited to include only standards for pollutants derived from petroleum.~~

(k) “Refinery” means a facility or location that refines crude oil, including, but not limited to, condensate and natural gasoline, into petroleum products, lubricating oils, coke, or asphalt.

CHAPTER 2. CALIFORNIA PETROLEUM POLLUTION CLEANUP
FUND

38050. (a) The California Petroleum Pollution Cleanup Fund is hereby created in the State Treasury. The money in the fund shall be expended for purposes of this division, upon appropriation by the Legislature.

~~(b) The owner or operator of every refinery in the state shall pay a fee in the amount of thirty cents (\$0.30) for each barrel of crude oil refined at that refinery. The fee shall be remitted on a quarterly basis, for deposit in the fund, to the State Board of Equalization by the refinery owner or operator based on the number of barrels of crude oil refined during the previous quarter.~~

(b) Every operator of a refinery shall pay a fee in the amount of thirty cents (\$0.30) for each barrel of crude oil received at a refinery within the state.

(c) The State Board of Equalization shall administer the fee imposed pursuant to subdivision (b) in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(d) The fee imposed pursuant to subdivision (b) is due and payable to the State Board of Equalization monthly on or before the 25th day of the calendar month following the monthly period for which the fee is imposed. Each fee payer, on or before the 25th day of the month following each monthly period, shall make out a return for the preceding monthly period, in the form prescribed by the State Board of Equalization.

(e) All fees imposed pursuant to subdivision (b) shall be paid in the form of remittances payable to the State Board of Equalization. The State Board of Equalization shall transmit the payment to the fund.

(f) The money deposited to the credit of the fund may be expended for the following purposes:

(1) To pay for refunds pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

(2) To pay for the administrative costs of the State Board of Equalization of collection, auditing, and making refunds associated with the fund.

(3) The balance shall be expended as provided in Section 38051.

38051. (a) Of the fee paid for each barrel of crude oil refined received and deposited in the fund pursuant to Section 38050, ~~percent~~ a certain percentage, determined annually by the State Energy Resources Conservation and Development Commission, shall be for the amount of crude oil refined by the refinery into petroleum products other than diesel fuel. This amount shall be allocated to the Petroleum ~~Polluted Water~~ Pollution Remediation Account, which is hereby created in the fund. The moneys in the account ~~shall be administered by the California Environmental Protection Agency to remediate petroleum contamination of groundwater and marine and terrestrial surface waters.~~ shall be administrated by the agency. In administering the account, the agency shall be responsible for doing all of the following:

(1) Establishing a system for ranking projects according to priority. The criteria for that priority ranking shall include, but is not limited to, all of the following:

(A) The extent and severity of petroleum-related contamination that the project is designed to address.

(B) The overall need for funding.

(C) The proximity of the contamination to communities and the potential impact on the environment, economic well-being, and public health of those communities.

(D) The projected or past success of the project.

(2) Allocating funds to projects that are eligible for funding from the Petroleum Pollution Remediation Account, pursuant to subdivision (b) of Section 38100, according to the priority ranking established pursuant to paragraph (1).

(3) Commencing January 1, 2005, the agency shall biennially submit a report to the Legislature and the Governor detailing the recipients of account funds, projects funded, allocations of funds

1 *within the projects, achievements of those projects, and any other*
 2 *information the agency determines is relevant to an overall*
 3 *evaluation of the funding of the project. Each report shall contain*
 4 *a projection of projects the agency intends to fund during the two*
 5 *years following submission of the report.*

6 (b) Of the fee paid for each barrel of crude oil ~~refined~~ *received*
 7 and deposited in the fund pursuant to Section 38050, ~~===== percent~~
 8 *a certain percentage, determined annually by the State Energy*
 9 *Resources Conservation and Development Commission, shall be*
 10 *for the amount of crude oil refined by the refinery into diesel fuel.*

11 (1) Fifty cents (\$0.50) of each dollar deposited in the fund
 12 pursuant to this subdivision shall be allocated to the Carl Moyer
 13 Memorial Air Quality Standards Attainment Trust Fund, created
 14 pursuant to subdivision (a) of Section 44299 of the Health and
 15 Safety Code, to fund diesel emissions exposure reduction
 16 incentive projects and programs through air quality management
 17 districts and air pollution control districts.

18 (2) Fifty cents (\$0.50) of each dollar deposited in the fund
 19 pursuant to this subdivision shall be allocated to the State Air
 20 Resources Board to provide funding to ~~purchase new, lower~~
 21 ~~emitting schoolbuses pursuant to guidelines adopted by the state~~
 22 ~~board pursuant to Section 38152. the Lower-Emission School Bus~~
 23 *Program administered by the State Air Resources Board, which*
 24 *provides funding to purchase new, lower emitting school buses and*
 25 *to retrofit school buses with particulate trap and emissions*
 26 *reduction technology.*

27 (c) Not more than 3 percent of each allocation described in
 28 subdivisions (a) and (b) may be used for program administration
 29 and overhead costs.

30 (d) All interest earned on moneys deposited in the fund shall be
 31 deposited in the fund.

32 CHAPTER 3. ~~WATER~~ POLLUTION REMEDIATION

33
 34
 35 38100. The following criteria are applicable to moneys
 36 allocated to the Petroleum ~~Polluted Water~~ *Pollution* Remediation
 37 Account pursuant to subdivision (a) of Section 38051:

38 ~~(a) The following entities within the state are eligible to apply~~
 39 ~~for moneys from the account:~~

40 ~~(1) State government agencies.~~

- 1 ~~(2) Regional water quality control boards.~~
- 2 ~~(3) County and city agencies.~~
- 3 ~~(4) Public water districts and water utilities.~~
- 4 ~~(5) Private water companies.~~
- 5 ~~(6) Academic institutions.~~
- 6 ~~(7) Nonprofit organizations.~~
- 7 ~~(b)–~~
- 8 (a) The following projects are eligible for funding from the
- 9 account, to the extent that they relate to harm caused, or are
- 10 intended to mitigate or prevent the harm created, by petroleum
- 11 products that are refined by a refinery subject to this division:
- 12 (1) Investigation and remediation of ~~petroleum contamination.~~
- 13 ~~(2) Restoration of natural resources damaged by petroleum~~
- 14 ~~contamination.~~
- 15 ~~(3) Medical monitoring and treatment of persons exposed to~~
- 16 ~~petroleum contamination.~~
- 17 ~~(4) Identification of parties responsible for petroleum~~
- 18 ~~contamination.~~
- 19 ~~(5) Oversight of investigation and remediation programs for~~
- 20 ~~petroleum contamination being implemented by responsible~~
- 21 ~~parties.~~
- 22 ~~(6) Legal action against responsible parties for petroleum~~
- 23 ~~contamination.~~
- 24 ~~(7) Research into treatment technologies for petroleum~~
- 25 ~~contamination.~~
- 26 ~~(8) Development and implementation of TMDL projects~~
- 27 ~~designed to prevent, reduce, or minimize releases of petroleum.~~
- 28 ~~(9) Compliance with TMDL standards.~~
- 29 ~~(10) Investigation and remediation of orphan petroleum~~
- 30 ~~underground storage tanks.~~
- 31 ~~(H) petroleum-related contamination of soil, drinking water~~
- 32 ~~supplies, groundwater, and marine and terrestrial surface waters,~~
- 33 ~~including, but not limited to, all of the following:~~
- 34 (A) Orphan petroleum underground storage tanks.
- 35 (B) Drinking water supplies, groundwater, and marine and
- 36 terrestrial surface waters polluted by any petroleum product or
- 37 petroleum additive.
- 38 (C) Stormwater runoff from highways and roadways.
- 39 (D) Brownfields, as defined by paragraph (2) of subdivision (a)
- 40 of Section 25395.20 of the Health and Safety Code.

1 (2) *Comprehensive monitoring, investigation, and remediation*
2 *of air and water pollution caused by refinery operations.*

3 (3) Design and implementation of pollution prevention, as
4 defined in subdivision (b) of Section 13263.3 of the Water Code,
5 to prevent petroleum contamination.

6 ~~(12) Development and implementation of source water~~
7 ~~assessment and protection programs and basin management plans~~
8 ~~to protect water resources from release of petroleum.~~

9 ~~(13) Development of local oil spill contingency plans.~~

10 ~~(14) Prevention and mitigation of petroleum-related~~
11 ~~stormwater contamination.~~

12 ~~(e) (1) The following costs are eligible for funding from the~~
13 ~~account for purposes of the projects described in subdivision (b).~~

14 ~~(A) Any required technical consulting, engineering contractor~~
15 ~~services, or other staffing costs.~~

16 ~~(B) Legal fees incurred in actions against parties responsible~~
17 ~~for the contamination being addressed.~~

18 ~~(C) Educational programs for the business community and~~
19 ~~government.~~

20 ~~(2)–~~

21 *(b) Costs to address contamination at facilities owned or*
22 *operated by the person applying for funding are not eligible for*
23 *funding from the account to the extent that the applicant is directly*
24 *and verifiably responsible for the contamination of the facility.*

25 ~~(d)–~~

26 *(c) (1) Any applicant receiving moneys from the account for*
27 *a specific project shall take all reasonable steps to recover assist*
28 *in the recovery of those funds from parties responsible for the*
29 *contamination being addressed.*

30 *(2) Any recovery of funds pursuant to paragraph (1) shall first*
31 *be applied to reimbursing the account for any moneys disbursed*
32 *for that specific project.*

33 ~~38101. (a) The Secretary for Environmental Protection shall~~
34 ~~establish the California Petroleum Pollution Cleanup Fund~~
35 ~~Committee, which shall oversee the distribution of the moneys~~
36 ~~allocated to the Petroleum Polluted Water Remediation Account~~
37 ~~pursuant to subdivision (a) of Section 38051. The committee shall~~
38 ~~be comprised of the following members:~~

39 ~~(1) One representative from each of the following entities:~~

40 ~~(A) The State Air Resources Board.~~

1 ~~(B) The State Water Resources Control Board.~~

2 ~~(C) The Office of Oil Spill Prevention and Response in the~~
3 ~~Department of Fish and Game.~~

4 ~~(D) The State Department of Health Services.~~

5 ~~(E) The Department of Water Resources.~~

6 ~~(F) The State Division of Oil, Gas and Geothermal Resources~~
7 ~~in the Department of Conservation.~~

8 ~~(G) An air quality management district or air pollution control~~
9 ~~district, as determined by the secretary.~~

10 ~~(H) The State Energy Resources Conservation and~~
11 ~~Development Commission.~~

12 ~~(2) One member appointed by each of the following:~~

13 ~~(A) The Speaker of the Assembly.~~

14 ~~(B) The President pro Tempore of the Senate.~~

15 ~~(C) The Governor.~~

16 ~~(D) The Auditor General.~~

17 ~~(E) The Attorney General.~~

18 ~~(b) The committee shall review applications for funding, select~~
19 ~~funding recipients, and decide upon the level of funding for~~
20 ~~recipients for the moneys allocated to the Petroleum Polluted~~
21 ~~Water Remediation Account pursuant to subdivision (a) of Section~~
22 ~~38051.~~

23 ~~(c) The committee may not disburse, in any one fiscal year, an~~
24 ~~amount greater than the revenue received by the Petroleum~~
25 ~~Polluted Water Remediation Account pursuant to subdivision (a)~~
26 ~~of Section 38051 for that year, plus 20 percent of the accumulated~~
27 ~~balance from previous years.~~

28 ~~(d) The following entities in the state are eligible to apply for~~
29 ~~moneys from the account:~~

30 ~~(1) State agencies.~~

31 ~~(2) Regional water quality control boards.~~

32 ~~(3) County and city agencies.~~

33 ~~(4) Public water districts and public water utilities.~~

34 ~~(5) Private water companies.~~

35 ~~(6) Academic institutions.~~

36 ~~(7) Nonprofit organizations.~~

37 ~~(8) Air quality management districts and air pollution control~~
38 ~~districts.~~

39

CHAPTER 4. AIR POLLUTION REMEDIATION

38150. Moneys allocated to each project funded pursuant to subdivision (b) of Section 38051 shall be expended in a manner that directly addresses air pollution in communities that are severely impacted by air pollution, consistent with subdivisions (a) and (b) of Section 43023.5 of the Health and Safety Code.

38151. The parties, projects, and costs eligible for the moneys allocated to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund pursuant to paragraph (1) of subdivision (b) of Section 38051 are the same as those described in Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of the Health and Safety Code.

~~38152. The State Air Resources Board shall adopt guidelines to determine the parties, projects, and costs eligible for funding from the moneys allocated to the state board pursuant to paragraph (2) of subdivision (b) of Section 38051. The guidelines shall be specifically developed and adopted to govern the expenditure of those moneys, and shall be separate and distinct from guidelines adopted for any existing lower emission schoolbus program administered by the state board.~~

38152. The parties, projects, and costs eligible for funds allocated to the Lower-Emission School Bus Program pursuant to paragraph (2) of subdivision (b) of Section 38051 are those that the State Air Resources Board has defined as eligible for that program.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.